



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/995,058

11/26/2001

Jason K. Schnitzer

ESP0149

9530

7590

10/30/2006

ESP LLC

Attn: Charles A. Mirho

P.O. Box 890

Vancouver, WA 98666-0890

EXAMINER

TRAN, NGHI V

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/995,058	Applicant(s) SCHNITZER ET AL.	
	Examiner Nghi V. Tran	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-22 is/are pending in the application.
- 4a) Of the above claim(s) 11-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed on August 14, 2006. No claims have been amended. Claim 2 has been canceled. Claims 11-22 have been withdrawn. Therefore, claims 1 and 3-10 are presented for further examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because claims 3-4 is dependent on cancelled claim 2.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2151

5. Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dziekan et al., U.S. Patent No. 6,704,288 (hereinafter Dziekan), in view of Agarwal et al., U.S. Patent Application Publication No. 2003/0028642 (hereinafter Agarwal).

6. With respect to claims 1 and 8, Dziekan teaches a system for use with a broadband network [fig.1], the system comprising:

- a data collector [i.e. QoS monitor **140**] coupled to obtain network performance metrics from network elements in the at least a portion of the broadband network [i.e. concerned with collecting network performance metrics, see col.4, ln.58 – col.5, ln.4]; and
- logic to measure the performance metrics by applying device-specific information for the network elements from which the network performance metrics were obtained [i.e. other measurements that may be made at either the physical or MAC level layers, see col.5, ln.36-58].

However, Dziekan does not explicitly show logic to normalize the performance metrics.

In a managing system, Agarwal discloses or suggests logic to normalize the performance metrics [i.e. normalizes the metrics, see paragraph 0078].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Dziekan in view of Agarwal by normalizing the performance metrics because this feature leads to metrics on the global usage of each resource class, as well as the usage by each customer [Agarwal, paragraph 0078]. It is

Art Unit: 2151

for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to directly adjust on a per client-basis [Agarwal, paragraph 0010].

7. With respect to claims 3 and 10, Dziekan further teaches wherein the device-specific information includes at least one of make, model, hardware version, software version, and element settings associated with each of the network elements [i.e. other measurements that may be made at either the physical or MAC level layers, see col.5, ln.36-58 and col.10, ln.27-57].

8. With respect to claims 4 and 9, Dzieka further teaches wherein the data collector is further configured to obtain at least one of Management Information Base objects and command line interface information from the network elements and the logic is further to determine the device-specific information from the at least one of Management Information Base objects and command line interface information [i.e. authorized to access MIB objects of the network elements, see col.4, ln.5-34].

9. With respect to claim 5, Dzieka further teaches wherein the network performance metrics are remotely-accessible standard management instrumentation [figs.1-2].

10. With respect to claim 6, Dzieka further teaches wherein the broadband network is a Data Over Cable Service Interface Specification (DOCSIS) network [col.10, ln.27-57]

Art Unit: 2151

and the network performance metrics include at least one of signal-to-noise ratio [col.7, ln.17], power level, equalizer coefficients setting information, error information, counter information, bandwidth, quality of service, latency, and jitter [i.e. QoS, BER, FER, see col.4, ln.58 – col.5, ln.4].

11. With respect to claim 7, Dzieka further teaches wherein the logic comprises software instructions and a computer processor configured to read and execute the software instructions [col.5, ln.48 - col.6, ln.2].

Response to Arguments

12. Applicant's arguments filed August 14, 2006 have been fully considered but they are not persuasive because of the following: Dziekan teaches a system for use with a broadband network [fig.1], the system comprising: a data collector [i.e. QoS monitor 140] coupled to obtain network performance metrics from network elements in the at least a portion of the broadband network [i.e. concerned with collecting network performance metrics, see col.4, ln.58 – col.5, ln.4]; and logic to measure the performance metrics by applying device-specific information for the network elements from which the network performance metrics were obtained [i.e. other measurements that may be made at either the physical or MAC level layers, see col.5, ln.36-58]. However, Dziekan does not explicitly show logic to normalize the performance metrics. In a managing system, Agarwal discloses or suggests logic to normalize the performance metrics [i.e. normalizes the metrics, see paragraph 0078]. Therefore, it

Art Unit: 2151

would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Dziekan in view of Agarwal by normalizing the performance metrics because this feature leads to metrics on the global usage of each resource class, as well as the usage by each customer [Agarwal, paragraph 0078]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to directly adjust on a per client-basis [Agarwal, paragraph 0010].

13. In response to applicant's argument that there is no teaching in either reference to normalize performance metrics according to device-specific information. Examiner respectfully disagrees because applicant obviously attacks references individually without taking into consideration based on the teaching of combinations of references as show in the above. See *In re Keller*, 642 F. 2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F. 2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For example, Dziekan teaches to measure the performance metrics by applying device-specific information for the network elements from which the network performance metrics were obtained [i.e. other measurements that may be made at either the physical or MAC level layers, see col.5, ln.36-58]. However, Dziekan does not explicitly teach normalizing the performance metrics. In a related art, Agarwal discloses normalizing the performance metrics [paragraph 0078]. Therefore, the combinations of references, Dziekan in view of Agarwal, suggest normalizing performance metrics according to device-specific information.

Art Unit: 2151

14. Therefore, the examiner asserts that cited prior arts teach or suggest the subject matter broadly recited in independent claims. Claims 3-7 and 9-10 are rejected at least by virtue of their dependency on independent claims and by other reasons set forth above. Accordingly, claims 1 and 3-10 are respectfully rejected as shown above.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. "Detecting superimposed information channels for modem connections,"
by Wang, United States Patent Number 6,751,260.

Art Unit: 2151

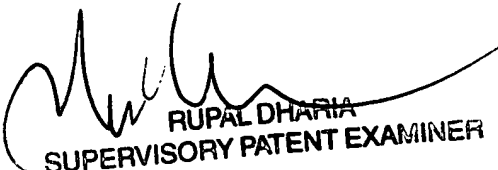
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi V. Tran whose telephone number is (571) 272-4067. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nghi V Tran
Patent Examiner
Art Unit 2151

October 25, 2006


RUPAL DHARIA
SUPERVISORY PATENT EXAMINER